

# BLANKROME

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July 7, 2020

Hon. Ronnie Abrams, U.S.D.J.  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 2203  
New York, New York 10007

Re: ***Delacruz v. Five Below, Inc.***  
**Civil Action No.: 19-cv-10294 (RA)**

Dear Judge Abrams:

Blank Rome represents Five Below, Inc. (“Five Below” or “Defendant”) in the above referenced matter. In accord with Your Honor’s Individual Rules and Practices and in response to the Order you issued in this case on July 6, 2020 (Docket Entry No. 17), we write, jointly with Plaintiff’s counsel and with his consent, to respectfully request a stay of this matter pending the Second Circuit Court of Appeals’ determination of the Consolidated Appeal captioned *Mendez v. AnnTaylor, Inc.*, No. 20-1550 (the “Consolidated Appeal”), currently pending before that court.

By way of brief background, this Court, by Order dated February 28, 2020, previously stayed this matter pending the resolution of the defendant’s motion to dismiss filed in *Henry Tucker v. Whole Foods Market Group, Inc.*, No. 19-cv-9842 (RA) (S.D.N.Y. June 29, 2020).<sup>1</sup> On June 29, 2020, Your Honor issued an Opinion and Order granting Whole Foods’ motion. Under Your Honor’s February 28 Order, Five Below’s response to the Complaint is due on or before next Monday, July 13, 2020.

Subsequent to Your Honor’s Opinion and Order granting Whole Foods’ motion, this Court granted plaintiff’s application for a stay of the *Tucker* case pending the Second Circuit’s decision in the Consolidated Appeal. (*See Tucker*, No. 19-cv-9842, Docket Entry No. 40). The parties in this matter hereby request a similar comprehensive stay of this action pending the Second Circuit’s determination of the Consolidated Appeal. Staying the action pending the determination of the

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<sup>1</sup> The operative complaint in the *Tucker* case is substantially identical to, and essentially asserts the same allegations and claims as, the Complaint in this case.

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Consolidated Appeal will conserve both the parties' and this Court's time and resources, and permit the parties and this Court to proceed at a future date with the benefit of guidance from the Court of Appeals.

The parties propose that Defendant's response to the Complaint be due within fourteen (14) days of the entry of the Second Circuit's decision in the Consolidated Appeal, and that the Initial Conference in this case be scheduled within thirty (30) days of the entry of such decision. The parties will not be prejudiced in any way if the case is stayed pending the Second Circuit's decision and, indeed, as noted above, the Plaintiff consents to the proposed stay.

Accordingly, the parties respectfully request that this matter be stayed pending the Second Circuit's decision in the Consolidated Appeal.

We appreciate Your Honor's consideration of this request, and thank the Court for its time and attention to this matter.

Respectfully submitted,

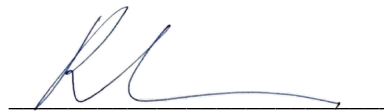
/s/ Anthony A. Mingione

Anthony A. Mingione

cc: Jeffrey M. Gottlieb, Esq. (via email)

Application granted. This action is hereby stayed. No later than one week after the Second Circuit issues its decision in the consolidated appeal captioned Mendez v. Ann Taylor, Inc., No. 20-1550, the parties shall file a joint letter informing the Court of their position on how the Second Circuit's decision impacts this particular case and proposing next steps in this action.

SO ORDERED.



Hon. Ronnie Abrams

7/8/2020